Supreme Court, U.S.
FILED
JUN 24 1986
JOSEPH F. SPANIOL, JR.
CLERK

(3)

No.85-1868

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ATLANTIC RICHFIELD CO.,

Petitioner,

—against—

INTERSTATE OIL TRANSPORT CO.,

Respondent.

PETITIONER'S REPLY BRIEF

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STATEMENT

Petitioner Atlantic submits this Reply Brief because Respondent Interstate in its Brief in Opposition has not only distorted the facts but has also overlooked the main issue presented in this Petition—whether the Court of Appeals erred in reversing the factual findings of two U.S. district courts that Atlantic's settlement agreement with American was fair and reasonable.

THE FACTS

At page 1 of its Brief, Respondent asserts that the penultimate paragraph of Judge Ryan's May 12, 1977 Order (Appendix, page 53a) precluded Atlantic from making any claim against Interstate except for the cargo loss sustained as a result of the casualty. Respondent states (emphasis added): "[t]his

claim for cargo loss was discontinued by Order dated May 12, 1977 (52a) without prejudice to petitioner's right to bring suit on *this claim* upon the conclusion of its litigation against American (7a, 52a)." Not so. The Order expressly preserved Atlantic's right to assert "*any claim* it would have been entitled to assert immediately prior to the entry of this order" (Appendix, page 53a, emphasis added). "Any claim" clearly included a claim for indemnity against Interstate, since prior to the Order American had asserted a counterclaim against Atlantic seeking recovery for the damage to its property and indemnification for amounts it might have to pay to third parties.

At page 2 of its Brief, Respondent states that "[t]he District Court specifically held that American, the facility owner, and Interstate were both negligent in causing the damage (21a, 36a)." This, too, is a distortion of the facts. Judge Broderick found (Appendix, page 36a, emphasis added): "[n]egligence on American's part certainly did play a role in the actual *severity of the damage*." Judge Broderick did *not* find, as Respondent implies, that American's negligence was a contributory cause of the explosion and property damage. He found, as did Judge Conner in the Judgment Order entered after Atlantic's settlement with American (Appendix, page 47a), that Atlantic probably would not have sustained its burden of proving a causal relationship between American's negligence and the casualty (Appendix, p. 27a).

THE ISSUES

At page 3 of its Brief, Respondent maintains that the Court of Appeals dismissed the action on a question of law—the construction of the lease agreement between Atlantic and American. Respondent's argument, however, overlooks the principal issue presented in the Petition. Atlantic does not take issue with the Court of Appeals' interpretation of the lease agreement as creating liability on Atlantic's part only with regard to third party claims, and not damage to American's

property. The real issue, however, is whether in labelling two district courts' findings of fact "clearly erroneous," the appellate court misread the terms of the Interstate-American settlement agreement. Paragraph 3 of that agreement unequivocally stated that Interstate paid $1,000,000 to American *for its property damage*, not as reimbursement for third party claims. The conclusion is thus inescapable that Atlantic's subsequent settlement with American was for these third party claims, for which it remained potentially liable under the lease agreement.

In arguing that the Court of Appeals' dismissal was based on a question of law, Respondent loses sight of the fact that the Court of Appeals itself labelled the district court's findings factual and subjected them to review under Rule 52(a). The appellate court's reversal was based on its disagreement with Judge Broderick's ultimate findings that the Atlantic-American settlement was reasonable and that Interstate had adequate notice of the settlement in light of the particular facts of the case. It should also be emphasized that Judge Broderick did not, as Respondent implies (Brief, p. 4), merely accept Judge Conner's earlier finding of reasonableness. Judge Broderick independently found the settlement fair and reasonable (Appendix, page 27a).

At page 5 of its Brief, Respondent goes so far as to argue that Atlantic should be precluded from showing that Judge Ryan's order, which was part of the record below and which provided that Atlantic could pursue its rights against Interstate only upon conclusion of the litigation between Atlantic and American, effectively prevented Atlantic from impleading Interstate. In support of its argument Respondent cites cases in which appellate courts refused to consider objections to a trial court's order which were not raised at the time the order was made. This rule, however, applies only to errors that were not pointed out to the court at the proper time, and has no application here. The error at issue here is the Second Circuit's conclusion in its opinion reversing the district court that the $1,000,000 Interstate-American settlement concerned reim-

bursement for third party claims, even though the plain language of that settlement agreement stated that Interstate paid the $1,000,000 to American *for its property damage*. The rule espoused by Respondent should not be applied in ritualistic fashion here, where its effect would be to let a wrong decision stand.

CONCLUSION

Respondent's reasons for opposing the Petition are unpersuasive. Indeed, Respondent does not seriously challenge Petitioner's main argument that the Second Circuit committed plain error in its reading of the settlement agreement between Interstate and American, and that the Second Circuit violated Rule 52(a) by overturning the district court's factual finding that the settlement agreement was fair and reasonable based on this erroneous reading. It is respectfully submitted that for all the reasons in the Petition, a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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